

42. (Amended) A method for producing a chimeric negative strand RNA virus comprising culturing a host cell transfected with plasmid cDNAs containing the nucleotide sequences encoding eight genomic segments from different strains of influenza virus, each of the segments comprising the reverse complement of an mRNA coding sequence for an RNA-directed RNA polymerase of a negative strand virus, wherein the host cell expresses an RNA polymerase protein and recovering a chimeric virus from culture.

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conc'd
43. (Amended) A method of claim 42 wherein the host cell constitutively expresses a polymerase protein.

44. (Amended) A chimeric virus recovered from the method of claim 42.

REMARKS

Applicants have amended the specification to correct the claim to priority. In particular, the specification has been amended to reflect the fact that this application is a continuation of Application Serial No. 09/106,377, filed June 29, 1998, which issued as U.S. Patent No. 6,001,634, which is a divisional of Application Serial No. 08/252,508, filed June 1, 1994, which issued as U.S. Patent No. 5,854,037, which is a continuation-in-part of Application Serial No. 08/190,698, filed February 1, 1994, now abandoned, which is a continuation of Application Serial No. 07/925,061, filed August 4, 1992, now abandoned, which is a divisional of Application Serial No. 07/527,237, filed May 22, 1990, which issued as U.S. Patent No. 5,166,057, which is a continuation-in-part of Application Serial No. 07/446,053, filed November 21, 1989, now abandoned, which is entitled to and claims right of priority to Application Serial No. 07/399,728 filed August 28, 1989, now abandoned.

Applicants have amended the Specification solely to identify the sequences disclosed therein by their respective SEQ ID NOs as found in the Sequence Listing being submitted concurrently herewith. No new matter is introduced by virtue of these amendments, and the amendments are fully supported by the Specification of the subject application and the claims as originally filed. Accordingly, Applicants kindly request that they be entered into the instant application.

Applicants have submitted herewith an unexecuted oath/declaration with the corrected filing date of November 21, 1989 for Application Serial No. 07/440,053.

Applicants have amended the claims to correct any informalities and particularly point out and claim the invention.

1. **Objections Raised To The Claims Have Been Addressed**

Misnumbered claims 36-45 have been renumbered according to the Examiner's instructions to claims 35-44.

2. **The Claim Rejections Pursuant To 35 U.S.C. §112 Should Be Withdrawn**

Claims 35-44 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Any informalities in the claims have been addressed in the amendment, and the rejection under 35 U.S.C. §112, second paragraph, should be withdrawn.

3. **The Rejection Of Claims 37, 41, And 44 Pursuant To The Judicially Created Doctrine Of Obviousness-Type Double-Patenting Should Be Withdrawn**

Claims 37, 41, and 44 are rejected under the judicially created doctrine of obviousness-type double-patenting as being unpatentable over claims 16-26 of U.S. Patent No. 5,166,057 ("the '057 patent"). Claims 37, 41 and 44 are rejected under the judicially created doctrine of obviousness-type double-patenting as being unpatentable over claims 13-25 of U.S. Patent No. 5,854,037 ("the '037 patent"). Claims 37, 41 and 44 are rejected under the judicially created doctrine of obviousness-type double-patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,001,634 ("the '634 patent"). The test for obvious variation is whether the subject matter of the claim in the subsequent patent or application would have been obvious to a person of ordinary skill in the art in view of the prior art and the subject matter of the claim of the prior patent. *In re Kaplan*, 442 F2d 1475 (Fed. Cir. 1986). The Examiner correctly points out that the conflicting claims are not identical; however, the Examiner is in error in asserting that the conflicting claims are not patentably distinct from each other. Furthermore, the Examiner has not established why a person of ordinary skill in the art would conclude that the invention defined by pending claims 37, 41 and 44 are an obvious variation of the issued claims of the '057 patent, the '037 patent and the '634 patent. There is nothing in the prior art that would suggest any method for creating recombinant negative strand RNA viruses and in particular, the methods claimed in the instant application. Hence, claims 37, 41 and 44 are not obvious over the claims of the '057 patent, the '037 patent, and the '634 patent, and should be allowed.

Conclusion

Applicants respectfully request that the amendment and remarks be entered into the file of the above-identified application. The Applicants believe that the invention defined by the claims meets all the requirements for patentability. Withdrawal of all rejections and reconsideration of the amended claims is requested.

Respectfully submitted, *by: Jacqueline Benn*
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